



The Fairfax County Tree Commission  
12055 Government Center Parkway, Suite 518  
Fairfax, Virginia 22035  
703.324.1770

**Approved July 6, 2023**

Jeffrey McKay, Chairman  
Dan Storck, Environmental Committee Chairman  
Members, Fairfax County Board of Supervisors  
12000 Government Center Parkway  
Fairfax, VA 22035

Sent by email to: [clerktothebos@fairfaxcounty.gov](mailto:clerktothebos@fairfaxcounty.gov)

## **Tree Conservation Code's Exemption of Linear Projects**

Dear Chairman McKay, Supervisor Storck, and members of the Fairfax County Board of Supervisors:

This letter is a follow up to the Tree Commission's (TC) December 14, 2022 letter to the Board of Supervisors (BOS) where the TC reported on the concerns of county residents who have observed valuable, mature trees being clear-cut for various projects, including "linear" projects. Recognizing that trees are one of our best allies in the fight against climate change and provide numerous other benefits, the BOS set a goal to maintain a net 57% total tree canopy by 2025. The BOS's Communitywide Energy and Climate Action Plan sets a further goal of 60% tree canopy overall, with a minimum of 40% in all census tracts by 2030.

The TC, however, is deeply concerned that the tree canopy is declining because of development pressure and tree deaths from disease, pests and invasive plant species, and continues to seek opportunities to advise the BOS on ways to preserve, protect and expand our urban tree canopy to meet the BOS's goals.

Accordingly, the TC's letter requested the following:

1. That the Board of Supervisors direct the County Attorney to reexamine the exemption of linear projects from Chapter 122 of the Tree Conservation code and whether that exemption is required by Virginia code.

2. If, as expected, the exemption is not legislatively mandated by statute, that relevant agencies be directed to include in linear project planning an accounting of the mature trees that could be affected by the project, to what extent they can and will be protected and whether new trees plantings will be feasible and included, and if not, to require payment into the Tree Planting and Preservation Fund.

After the BOS received the December 14, 2022 letter, TC Chair Cindy Speas and Vice-Chair Elaine Kolish were asked to attend a virtual meeting on February 9, 2023 with the following county officials: Barbara Byron, Chairman McKay's office; Chris Harrington, Director Department of Public Works and Environmental Services (DPWES); Brian Keightley, Director Urban Forest Management Division (UFMD); Bill Hicks, Director Land Development Services (LDS); Tom Biesiadny, Director of Fairfax County Department of Transportation (FDOT); and Marc Gori, Assistant County Attorney.

During our discussion, staff made a number of comments that aided our understanding of the potential drawbacks and costs to formally removing the exemption and requiring linear projects to meet some or all the county's tree conservation goals. The staff reported that:

- County agencies use best practices to avoid unnecessary tree removal, for example:
  - Adding curves to trails to avoid removing trees
  - Narrowing trails in places to avoid removing trees;
- Tree removal is expensive, so staff avoids cutting trees to the extent possible to save money
- Trees and sanitary sewers are not "good friends;"
- County agencies do tree replanting when feasible; and
- Staff indicated that the costs of compliance with the Tree Conservation Ordinance would increase the cost of each linear project and might result in fewer beneficial projects unless there were budget increases.
- Staff also noted that requiring linear projects that do not comply with Tree Conservation Code to pay an in lieu fee to the Tree Preservation and Planting Fund would be an unnecessary act of moving funds from one county account to another.
- At the meeting there was discussion and support for accountability and transparency via a BOS decree or policy directive on this issue.

Tree Commissioners in the meeting also asked whether the staff's "best practices" and ideas on how to preserve trees in linear projects could be included in the Public Facilities Manual (PFM). Staff responded that adding language to the PFM about using best tree preservation and planting practices to the extent possible would be too vague and/or changeable for the PFM, as it is intended to be a prescriptive "how-to" manual.

The Tree Commissioners then noted that staff documentation of existing mature trees and their efforts to preserve them would allow the public to know that the project was thoughtfully

handled, and that trees were not cut down simply because it was financially expedient to do so. Notwithstanding that public engagement accompanies each project, many members of the public will not be aware of the ins and outs of a project, and will simply complain to the TC or county officials when they see mature trees cut down for, e.g., a trail widening or extension.

**Tree Commission Recommendation:** In light of the information and discussion at the February 9, 2023 meeting, and in subsequent discussions, the TC has reconsidered its December 14, 2022 recommendations. Although the TC believes that the exemption for linear projects in the Tree Conservation Ordinance (in the Tree Conservation Ordinance, Chapter 122-2-1(b)) is not mandated by statute and could be removed, the TC now recommends that the BOS issue a policy directive that requires staff to provide relevant data about tree preservation and planting efforts for linear projects. This data would be included in the TC's annual report to the BOS. The TC and staff could collaborate on determining what specific data would be reported. Bearing in mind that a new reporting obligation will place additional responsibilities on staff, the TC further proposes that it and staff evaluate the reporting obligation after a period of three years to determine if benefits outweigh the costs of such reporting. At that point, the TC will recommend to the BOS on whether to sunset staff's reporting obligation or to continue it.

Additionally, staff suggested that it would be more effective to establish a regular avenue of funding to increase tree planting and invasives removal to preserve trees, rather than rely on county agencies to pay into the TPPF for linear projects. The TC agrees and requests an annual budget allocation for the TPPF.

Thank you for your consideration of this recommendation and your support of our urban forest.

Sincerely,

*Please email [TreeCommission@fairfaxcounty.gov](mailto:TreeCommission@fairfaxcounty.gov) for official signed version of letter*

Cindy Speas, Chair

Fairfax County Tree Commission

cc: Bill Hicks, Director Department of Planning and Development  
Chris Herrington, Director Department of Public Works and Environmental Services  
Brian Keightley, Director Urban Forestry Management Division  
Gregg Steverson, Acting Director, Fairfax Department of Transportation  
Jai Cole, Executive Director Fairfax County Park Authority  
Larry Zaragoza, Chair Environmental Quality Advisory Council  
Barbara Byron, staff support to Chairman McKay  
Camela Speer, staff support to Supervisor Storck